



BRB No. 17-0104

WILLIAM A. GRAVES)	
)	
Claimant-Respondent)	
)	
v.)	
)	
INNOV8TIVE SOLUTIONS)	
)	DATE ISSUED: <u>Nov. 7, 2017</u>
and)	
)	
ACE AMERICAN INSURANCE)	
COMPANY)	
)	
Employer/Carrier-)	
Petitioners)	DECISION and ORDER

Appeal of the Compensation Order Award of Attorney's Fees of Kristina K. Hall, District Director, United States Department of Labor.

Lara D. Merrigan (Merrigan Legal), San Rafael, California, and Jon B. Robinson (Strongpoint Law Firm, LLC), Mandeville, Louisiana, for claimant.

Matthew L. Kislak (Flicker, Garelick & Associates, LLP), New York, New York, for employer/carrier.

Before: BOGGS, BUZZARD and GILLIGAN, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Compensation Order Award of Attorney's Fees of District Director Kristina K. Hall (Case No. 06-307197) rendered on a claim filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33

U.S.C. §901 *et seq.*, as extended by the Defense Base Act, 42 U.S.C. §1651 *et seq.* (the Act). The amount of an attorney's fee award is discretionary and will not be set aside unless shown by the challenging party to be arbitrary, capricious, an abuse of

discretion, or not in accordance with law. *Roach v. New York Protective Covering Co.*, 16 BRBS 114 (1984).

Claimant sustained a psychological injury as a result of his exposure to cumulative war-zone hazards during his work in Afghanistan for employer. The parties entered into stipulations regarding claimant's entitlement to periods of temporary total, temporary partial and ongoing permanent partial disability and medical benefits for his work-related psychological condition, which were approved by Administrative Law Judge Larry W. Price in his decision dated April 14, 2016. Claimant's counsel thereafter submitted a fee petition to the district director requesting \$19,612.01 in attorney's fees and costs for work performed from February 17, 2015 through May 10, 2016.¹ Employer filed objections to the fee petition. In the Compensation Order, which was signed by Joel Romero "for Kristina K. Hall," claimant's counsel was awarded the entire fee requested.

On appeal, employer challenges the district director's attorney's fee order on the ground that it lacks sufficient analysis and explanation in view of employer's objections. Employer also contends that the awarded hourly rate must be vacated as it conflicts with the hourly rate awarded to counsel by the administrative law judge in this case. In response, claimant's counsel concedes that the fee award lacks a sufficient explanation but urges the Board to reject employer's contention that the district director must accept the hourly rate awarded by the administrative law judge.

An attorney's fee must be awarded in accordance with Section 28 of the Act, 33 U.S.C. §928, and the applicable regulation, 20 C.F.R. §702.132. It is the district director's responsibility to review the fee petition to determine whether the fee requested is reasonably commensurate with the necessary work done, taking into account the quality of representation, the complexity of the legal issues, and the amount of benefits, and to explain the fee award in terms of these criteria. *Sullivan v. St. John's Shipping Co., Inc.*, 36 BRBS 127 (2002); 20 C.F.R. §702.132(a). The district director thus has the duty to state why the fee awarded is reasonable under the regulatory criteria. *See generally id.* Moreover, where employer objects to the requested fee, the district director must address and provide explanations for granting or denying the objections. *Moyer v. Director, OWCP*, 124 F.3d 1378, 31 BRBS 134(CRT) (10th Cir. 1997); *Jensen v. Weeks Marine, Inc.*, 33 BRBS 97 (1999).

¹Counsel requested a fee for 58.5 hours of attorney services at \$335 per hour for work before the district director. Counsel also submitted a fee petition to Judge Price, who, in a Supplemental Decision and Order dated August 4, 2016, awarded counsel an attorney's fee, for which employer is liable under 33 U.S.C. §928(a), totaling \$52,589.35, representing 169.8 hours at an hourly rate of \$300 and \$1,619.35 in costs. *See Supplemental Decision and Order Awarding Attorney's Fees* dated August 4, 2016.

In this case, the district director set out the amount of the attorney's fee sought by counsel and acknowledged employer's submission of objections to that request. She then stated that, "taking all factors mentioned into consideration, the work performed and the complexity of the case," an hourly rate of \$335 is reasonable and appropriate for claimant's counsel and she thus approved the requested attorney's fee in its entirety.

In awarding this fee, the district director did not address the fee request under the regulatory criteria, *Sullivan*, 36 BRBS 127; 20 C.F.R. §702.132, or employer's objections and counsel's response thereto. *Jensen*, 33 BRBS 97. Moreover, the district director ordered that claimant "shall pay" the awarded attorney's fee, without addressing whether employer is liable for this fee award. 33 U.S.C. §928(a), (b). In light of the cursory nature of the district director's order, we vacate the district director's fee award and remand this case for further consideration.² *Sullivan*, 36 BRBS 127; *Steevens v. Umpqua River Navigation*, 35 BRBS 129 (2001); *Jensen*, 33 BRBS 97. On remand, the district director should fully discuss employer's objections to counsel's fee petition and provide an adequate rationale for her findings as to the compensability of counsel's services, the appropriate hourly rate, and the liability for the fee.³ 33 U.S.C. §928; *see generally* *Newport News Shipbuilding & Dry Dock Co. v. Director, OWCP* [Moody], 474 F.3d 109,

²Given our disposition of this appeal, we need not determine if employer correctly asserts that the claims examiner exceeded his authority by determining the fee to be awarded, or whether he merely signed the Compensation Order as authorized by the district director. Nonetheless, we note that, on remand, the determination of the attorney's fee award must be made by the district director herself or an assistant who has been authorized to perform the functions of a district director. *Mazzella v. United Terminals, Inc.*, 8 BRBS 755, *aff'd on recon.*, 9 BRBS 191 (1978); *see also* *Hill v. Nacirema Operating Co.*, 12 BRBS 119 (1980), *appeal dismissed sub nom. Nacirema Operating Co. v. Director, OWCP*, No. 80-1366 (4th Cir. July 25, 1980) (An assistant deputy commissioner has the authority to award an attorney's fee only if the assistant has been authorized to perform the functions of a deputy commissioner.).

³We reject employer's contention that the district director should summarily accept or is otherwise limited by the hourly rate awarded to counsel by Judge Price in this case. Fees for work at each level of the proceedings must be approved by the body before which the work was performed. The district director thus may independently consider the appropriate market rate to be paid for counsel's services in this case. *See generally* *Newport News Shipbuilding & Dry Dock Co. v. Director, OWCP*, 594 F.2d 986, 9 BRBS 1089 (4th Cir. 1979); *Ayers Steamship Co. v. Bryant*, 544 F.2d 812, 5 BRBS 317 (5th Cir. 1977); *Wood v. Ingalls Shipbuilding, Inc.*, 28 BRBS 156, *modifying on recon.* 28 BRBS 27 (1994) (legal services must be approved at each level of the proceedings by the tribunal before which work was performed).

40 BRBS 69(CRT) (4th Cir. 2006); *Virginia Int’l Terminals, Inc. v. Edwards*, 398 F.3d 313, 39 BRBS 1(CRT) (4th Cir.), *cert. denied*, 546 U.S. 960 (2005); *W.G. [Gordon] v. Marine Terminals Corp.*, 41 BRBS 13 (2007).

Accordingly, the district director’s Compensation Order Award of Attorney’s Fees is vacated, and the case is remanded for further proceedings consistent with this opinion.

SO ORDERED.

JUDITH S. BOGGS
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge